

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

ROCKWOOD CUSTODIAL AND
MAINTENANCE ASSN., MNEA/NEA,

Petitioner,

v.

ROCKWOOD R-VI SCHOOL DISTRICT,

Respondent.

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Public Case No. R 92-009

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Rockwood Custodial and Maintenance Association, MNEA/NEA of a petition for certification as public employee representative for all custodial employees of the Rockwood School District. A hearing was held on April 14 and 22, 1992 at which representatives of the Association and the District were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, Employer Member Pamela Wright, and Employee Member Donald Kelly. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986. At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Rockwood School District encompasses an area of 150 square miles in St. Louis County. Scattered across this area are 50 different school buildings located at 26 different locations. A principal or building administrator is responsible for each of these

buildings. The custodial maintenance of these buildings is the responsibility of the Custodial Coordinator, Robin Kearns.

These buildings are cleaned by the District's 143 custodians. The largest number of these custodians work at the District's two senior high schools (14 and 12 respectively), while as few as three or four custodians work at the District's elementary schools.

The custodians are categorized by the District as either regular, lead or head custodians. There are about 120 regular custodians, 23 lead custodians and 6 head custodians. In the District's organizational structure, principals are over head custodians who are over lead custodians who are over regular custodians. The regular custodians work at all of the District's facilities. Seventeen of the lead custodians work at the elementary schools and three each at the junior and senior high schools. Four of the head custodians work at the District's junior high schools and two work at the senior high schools.

At issue here is whether the 23 lead custodians at the District's elementary, junior and senior high schools and the four head custodians and the junior high schools are supervisors. The parties have agreed to exclude the high school head custodians (Mansker and Mahler) from an agreed upon custodial bargaining unit.

Only the head custodians at the high schools, Mansker and Mahler, spend a majority of their time performing duties other than regular custodial work. The rest of the head and lead custodians (i.e. the 27 positions at issue here) spend most of their time performing regular custodial duties such as mopping, sweeping and cleaning. Each of the head and lead custodians, like the regular custodians, is assigned their own custodial duties to perform. These duties are similar or identical to those performed by the regular custodians.

In addition to these regular custodial duties, head and lead custodians accept complaints and/or instructions regarding building maintenance. They relay instructions from the principal and other employees in the building regarding custodial duties that need to be performed such as responding to emergencies, accidents and extracurricular activities. They do this by telling a regular custodian directly or leaving a note for them that a particular task needs to be done. Some head and lead custodians carry pagers to communicate these instructions. These instructions can also be given to the regular custodians by administrators, principals, teachers, students, parents and other custodians.

The head and lead custodians also inspect various areas of their building and oversee the work performed by the regular custodians to ensure it is performed correctly. The amount of time spent on the foregoing activities (i.e. monitoring work performed by the regular custodians and relaying work instructions) varies from individual to individual. For example, Mike Spresterbach, a senior high school lead custodian, spends six hours a day performing regular custodial duties and the remaining two hours relaying instructions to his other custodians; Doug Revelle, a junior high school head custodian, spends seven hours a day performing regular custodian duties and about one hour relaying instructions and checking work; and Valeria Farrar and John Babyak, elementary lead custodians, spend seven and one-half hours a day performing regular custodial duties. With the exception of Mansker and Mahler (the high school head custodians), the most time spent by any head or lead custodian monitoring work and relaying instructions is about three hours a day.

All custodians have been assigned specific custodial duties they are to perform on their various shifts. The assignment of custodial duties is prepared by the principal or at his or her direction and variations may be made when head and lead custodians

respond to different circumstances or emergencies. Head and lead custodians may make minor changes in these work assignments, but any significant change in regular custodians' work schedules or work assignments would come to the principal's attention. All work orders are authorized by the principal or building administrator.

During the summer months, the head and lead custodians oversee the "deep cleaning" that occurs while the students are not in school. This is the time when the major cleaning is done in all the schools. The head and lead custodians know what tasks are to be performed and they ensure they are completed.

Head and lead custodians usually do not meet with the regular custodians assigned to their building on a regular basis and there is no requirement that they do so. Some regular custodians work when there is no head or lead custodian on duty.

In the event a regular custodian is going to be absent from work, they will notify the school by contacting either the principal's office or the head or lead custodian. If the head or lead custodian is contacted, he or she notifies the principal's office of the absence. These custodial absences are filled by substitute custodians. A list of substitute custodians is prepared weekly by the Custodial Coordinator. A substitute custodian may be contacted by head or lead custodians, principals or office secretaries. On occasion, regular custodians have contacted their own substitutes from the substitute list. Head and lead custodians are not empowered to remove a substitute from the substitute list. In those cases where a substitute custodian cannot be found, the head or lead custodian either assumes the duties of the absent custodian or reassigns those duties to other custodians.

All overtime work is authorized by the principal or building administrator through the District's Human Resources office. When a school building is used for extracurricular or community activities, the group utilizing the building will make

arrangements through the principal or building administrator. After the arrangements are made, the principal or building administrator will request that the District authorize the necessary overtime for custodial workers to prepare the building for the event and cleanup after the use. The head and lead custodians may or may not be consulted regarding how much overtime is required for the event. Head and lead custodians then ask the regular custodians to work overtime. If a regular custodian declines to do so, head and lead custodians are not empowered to force them to work overtime.

Regular custodians confer initially with head and lead custodians concerning vacation requests. Such requests are then submitted to the building principal. From there, requests go to the District personnel office for approval.

On occasion, regular custodians are transferred from one building to another. In such cases, the transfer is handled by the Human Resources office and the building principal. Head and lead custodians are not involved in the process.

The District does not formally evaluate custodians. Consequently, head and lead custodians do not formally evaluate the performance of the regular custodians they work with. Informally though, head and lead custodians inspect the work of the regular custodians, document problem areas and deficiencies, and report them to the principal. There is no formal procedure for such inspections. The wages of the regular custodians are not based on nor dependent upon these inspections of their work by the head and lead custodians.

The District uses the following three-step progressive discipline procedure for its regular custodial staff: first a verbal warning, then a written warning and finally termination. Under this procedure, head and lead custodians are responsible for issuing verbal warnings, principals for written warnings and the District's Human Resources office for the final step (i.e. discharge). The verbal warnings given by the head and lead

custodians to the regular custodians usually consists of pointing out mistakes and admonishing them to improve their work performance. If these verbal warnings are not successful in altering the conduct, they document these mistakes or omissions and relay this information to the principal. The principal then independently reviews the situation and decides if discipline is warranted. If the principal decides disciplinary action is needed, the principal imposes it; not the head or lead custodians. Before principals impose discipline on regular custodians, they may or may not consult with the head or lead custodians regarding same. When a principal does discipline a regular custodian, the head or lead custodians may or may not be called in to act as a witness to the discipline. Finally, after the discipline is imposed, the head or lead custodians may or may not be advised of the discipline meted out by the principal. Attempts by head and lead custodians to issue discipline beyond verbal warnings have usually been rebuffed. For example, a recommendation by lead custodian Farrar that an employee be fired was not followed, and attempts by junior high school head custodian Doug Revelle to discipline employees for absenteeism and insubordination were not followed. The record indicates that high school lead custodian Mike Spresterbach once recommended to high school head custodian Mansker and Custodial Coordinator Kearns that disciplinary action be taken against two regular custodians for absenteeism. The two custodians were subsequently discharged, but Spresterbach did not make the decision to discharge them nor did he recommend such action. The dismissal letter to the fired custodians was signed by Mansker and the personnel director. The record also contains one instance where a lead custodian, Matt Gonzales, issued a written warning to an employee.

Custodians are hired by the principals and building administrators through the central office. When a custodial position opens up at a school, the principal will notify

the personnel office that the position is open and personnel then publicizes that opening. Persons interested in the position contact the personnel office which then compiles a list of potential candidates for the position. Those names are then supplied to the principal. The principal usually interviews the potential candidates. Sometimes the principal asks head and/or lead custodians to sit in on these interviews. When they have done so, they have asked the applicant questions. One head custodian (Revelle) has interviewed applicants by himself. After the interviews, the head and/or lead custodians have made recommendations to the principal as to which applicant ought to be hired for the vacant custodial position. Their recommendation concerning who to hire may or may not be followed by the principal in such situations. It is not necessary to the hiring process that head or lead custodians be involved in the interviewing process. In some cases, the principal also solicits the opinions of regular custodians regarding the hiring of a custodian.

With regard to wages and benefits, all custodians are paid according to the District's 13 step salary schedule. Employees progress through this schedule based on their years of service. Lead custodians receive an additional add-on tacked on to their regular custodian's pay. The elementary day lead custodians receive a \$0.55 add-on and the night elementary lead custodians receive a \$0.75 add-on. The senior and junior high lead custodians receive a \$1.00 and \$0.80 add-on respectively. The four junior high head custodians receive a flat rate of \$13.90 per hour. Regular custodians cannot make as much salary as a head custodian. It is possible though for a regular custodian to have a higher salary than a lead custodian. All of the head and lead custodians receive the same fringe benefits as the regular custodians.

Custodial Coordinator Kearns does not meet with the head or lead custodians on a regular bases. After Kearns was hired in 1990 though, he met individually with all of

the head and lead custodians to introduce himself. In these meetings, Kearns told them he (Kearns) considered them supervisors. During the summer of 1991, Kearns called a meeting of students hired for the summer and introduced the head and lead custodians to them as their supervisors. That same summer, Kearns held a series of meetings for all the head and lead custodians. Topics addressed at these meetings were workplace safety, disciplinary techniques, training new employees and standardizing cleaning procedures. Kearns has told the head and lead custodians to monitor the attendance of the regular custodians. Kearns has told the head and lead custodians to cut back on their custodial work so they can devote more time to their other duties.

CONCLUSIONS OF LAW

Rockwood Custodial and Maintenance Association, MNEA/NEA originally petitioned to be certified as public employee representative of a bargaining unit comprised of all custodial and maintenance personnel employed by the Rockwood School District, including substitutes. Thereafter, the District objected to the inclusion of the maintenance employees, substitute custodians and head and lead custodians in the proposed bargaining unit. The Association later filed an amended election petition seeking to represent all full-time and regular part-time custodians employed by the Rockwood School District, excluding maintenance employees, substitute custodians and supervisors.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case there is no dispute per se concerning the appropriateness of the bargaining unit referenced in the Association's amended petition. That being the case, we hold that the custodial unit referenced in the Association's amended petition is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

At issue here is whether the head and lead custodians qualify as supervisors so as to be excluded from the aforementioned bargaining unit. The District contends they qualify as supervisors while the Association disputes this assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether 27 head and lead custodians are supervisors, it is necessary for us to determine if such is, in fact, the case.¹

In making this decision, this Board has historically considered the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.

¹ No dispute exists though concerning the supervisory status of the two head custodians at the senior high schools (Mansker and Mahler). The parties stipulated at the hearing they were excluded from the unit as supervisors.

- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.²

We will apply them here as well. Not all of these criteria need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.³

Applying these criteria to the 27 head and lead custodians at issue here, we conclude that on balance they do not meet this supervisory test. Our analysis follows.

To begin with, we find that the head and lead custodians effectively recommend few of the procedures listed in factor (1) above, namely hiring, firing, disciplining and/or evaluating employees.

With regard to hiring, we note at the outset that some head and lead custodians have been invited by the building principal to participate in interviewing job applicants and one head custodian has interviewed applicants on his own. Be that as it may, there is no evidence to support a finding that the head or lead custodians actually hire custodians on their own or effectively recommend same. Instead, the District's hiring process is managed by its central personnel office which publicizes job openings and designates the candidates who are eligible to be hired for open positions. The names of those eligible candidates are then referred to the principal or building administrator who ultimately makes the recommendation to personnel which applicant is hired for his or her building. The principal has the discretion to either include or exclude head and/or lead custodians from the interviewing process. While some principals have, on occasion, consulted with head and lead custodians concerning which candidates to hire,

² See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

³ See, for example Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

this decision is again at the discretion of the principal. Sometimes their recommendations have been followed and sometimes ignored. Similarly, transfers of custodians between buildings are arranged by the central personnel office and are implemented without consultation with head or lead custodians.

With regard to firing, it is undisputed that head and lead custodians are not empowered on their own volition to discharge regular custodians. Discharges are handled by the central personnel office. Attempts by head and lead custodians to discharge employees have been rebuffed. For example, lead custodian Farrar's recommendation that a custodian be fired was not followed.

With regard to discipline, the record indicates that with the exception of one time when a lead custodian issued a written warning, head and lead custodians usually only mete out verbal warnings. Under the District's progressive discipline policy, head and lead custodians are responsible for the first step (verbal warnings) and that step only. The second step of progressive discipline (i.e. a written warning) is handled by the building principal. If the principal decides that such discipline is warranted, he or she alone makes that decision. After the principal makes this decision (whether or not to impose discipline), he or she may or may not inform the head or lead custodians of the decision.

Concerning evaluations, it is undisputed that the head and lead custodians do not formally evaluate the regular custodians' job performance. While the head and lead custodians informally assess how the regular custodians perform their work, the wages of the regular custodians are not affected in any way by the head and lead custodians' assessment of their work performance. Finally, head and lead custodians do not make decisions that affect the promotional opportunities of the regular custodians.

The foregoing convinces us that while head and lead custodians are sometimes involved in the initial stages of discipline and are occasionally consulted by principals in matters of hiring, they certainly are not an indispensable party in the District's hiring,

firing or disciplinary decisions because their recommendations are sometimes ignored. In almost every hiring, firing and discipline decision documented in the instant record, the final decision was with the principal or a higher authority; not the head and/or lead custodians.

Attention is now turned to factor (2) above. Every custodian, whether head, lead or regular, has a designated work area and a list of specific job duties that he or she is to perform each day. Although all custodians are expected to respond to emergencies such as spills or accidents, the majority of custodial duties are predetermined and may not be significantly changed. By in large, the assignments of those job duties and work areas are made by principals and building administrators. As a result, head and lead custodians may not make significant changes in them without consulting with the principal and/or building administrator. That being the case, the head and lead custodians at issue simply do not have the discretion or independent authority to substantially vary the preassigned job duties of the custodial work force. Additionally, they are not empowered on their own to authorize vacation or overtime for the regular custodians. Insofar as the record shows, the regular custodians know their job assignments and do not rely upon the head or lead custodians to meet with them, instruct them on the performance of their duties or make decisions about what tasks they are to undertake. While the head and lead custodians relay work instructions to the regular custodians and routinely inspect their work, in our view this involves limited independent judgment.

Next, with regard to factor (3), the record indicates that head and lead custodians frequently work with just a few (i.e. two or three) of the regular custodians. That being the case, head and lead custodians are not responsible for large numbers of regular custodians. The District nevertheless contends that if we find that the head and lead custodians are not supervisors, then Custodial Coordinator Kearns will be the sole supervisor for all 140 custodians. In our opinion, this argument misses the mark

because it totally ignores the role played by the building principal in supervising the custodians. Practically speaking, each building principal is responsible for all the teachers and support staff in their building, including custodians. That being so, we are persuaded that the building principals exercise great control over the regular custodians than do the head and lead custodians.

With regard to the level of pay (factor 4) it is noted that all custodians (i.e. head, lead and regular) are paid according to the District's 13 step salary schedule. The four junior high head custodians are paid a flat rate of \$13.90 per hour and the lead custodians are paid in fixed hourly increments above their normal custodians' salaries. These increments (for the lead custodians) range from a low of \$.55 for the elementary day lead custodians to a high of \$1.00 for the senior high lead custodians. Other than this extra pay, the head and lead custodians receive the same benefits as the regular custodians. In our view, this extra pay (which is simply tacked on to their normal custodial salary) compensates them for the additional responsibilities they have been given to check the work of the regular custodians and relay information to them.

Attention is now turned to factor (5). Oftentimes, regular custodians do not work at the same time or in the same place as the head and lead custodians. As a result, many of the regular custodians work on their own or on another shift from the head and/or lead custodians. A natural consequence of this arrangement is that the head and lead custodians do not monitor the regular custodians in person as they perform their custodial duties. Instead, they review and observe the work of the regular custodians after it has been performed. This leads us to conclude that the head and lead custodians primarily observe or report on the result of the regular custodians work (i.e. their work activity) rather than directly supervising the regular custodians themselves.

What we have just described is the classic example of a leadworker or working supervisor (i.e. someone who supervises a work activity). The head and lead

custodians spend, on average, about 25% of their time relaying work instructions and inspecting the work performed by the regular custodians and 75% of their time doing their own custodial duties. This means that the head and lead custodians spend the vast majority of their time performing custodial duties similar or identical to those performed by the regular custodians they work with. We therefore conclude that the head and lead custodians at issue are not supervisors. In so finding, we do not believe we are "stripping" the head and lead custodians of supervisory status. Instead, in our view, they simply do not presently possess sufficient indicia of supervisory status to make them supervisors.

DECISION

It is the decision of the State Board of Mediation that the 27 head and lead custodians at issue here are not supervisory employees. They are therefore included in the custodial bargaining unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they

desire to be represented for the purpose of exclusive recognition by Rockwood Custodial and Maintenance Association MNEA/NEA.

It is hereby ordered that the District shall submit to the Chairman of the State Board of Mediation, as well as to the Association, within seven (7) days from the date of receipt of this decision, an alphabetical list of names and addresses of employees in the agreed upon bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 16th day of July, 1992

(SEAL)

STATE BOARD OF MEDIATION

/s/ Mary L. Gant
Mary L. Gant
Chairman

/s/ Pamela S. Wright
Pamela S. Wright
Employer Member

/s/ Donald N. Kelly
Donald N. Kelly
Employee Member